S.B.Civil Misc.Appeal No.644/1997.
Amar Chand v. Bulaki Das & anr.

Date of Order: 02.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. A.K. Rahvanshi for the appellant.
Mr. N.S.Acharya for the respondents.

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Heard learned counsel for the parties.

The appellant-plaintiff is aggrieved against the order of the first appellate court dated 27.8.1997 by which the first appellate court set aside the judgment and decree of the trial court dated 31.3.1993 and remanded the case to the trial court for decision afresh.

Brief facts of the case are that the plaintiff filed a suit with specific allegation that he let out three rooms in a house to defendant nos.1 and 2 both on monthly rent of Rs.100/-. The plaintiff also let out a specific portion of the house to defendant no.2 alone on monthly rent of Rs.300/-. The plaintiff further alleged that defendant no.1 sub-let the portion to defendant no.2, obviously in which defendant no.1 was also tenant. The plaintiff also submitted that defendant no.2 took specific portion of the house on rent for which he executed a rent deed also. The plaintiff alleged that defendant, without permission of the landlord, started industry in the house. On these allegations, the plaintiff sought decree for eviction of the tenants on the ground of default, sub-letting, change of user and material alteration etc.

Defendant no.2 alone submitted written statement and took a plea that defendant no.2 alone is paying the rent at the rate of Rs.400/- per month. Defendant no.2 denied other allegations also but in para no.3 specifically stated that defendant no.2 alone is the lawful tenant in the entire house. However, defendant no.2 stated that three rooms for which the plaintiff stated that those rooms were let out to defendant nos.1 and 2, is wrong and he alone took these rooms on rent on 14.6.1985 on monthly rent of Rs.100/-. Thereafter, defendant no.2 took the rest of the portion on rent of Rs.300/- per month. The plaintiff is giving receipt of rent @ Rs.400/- per month.

The trial court determined the rent @ Rs.400/- per month under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The defendant committed default in payment of rent and therefore, defendant's defence against the eviction was struck off by the order of the trial court and the appeal against the striking off the defence of the defendants was dismissed by the appellate court. Ultimately, the suit of the plaintiff was decreed by the trial court. It will be worthwhile to mention here that the defendants were denied to produce evidence on all the issues including issue of default. Defendant no.2 alone preferred appeal. The appellate court in its order dated 27.8.1997 observed that in view of the case of the plaintiff, the court below should have determined the rent separately for two tenancies,

when plaintiff's case was that he let out one portion of the house to defendant nos.1 and 2 and let out another portion to defendant no.2 alone. The first appellate court observed that in that situation, the trial court should give opportunity to the plaintiff to file two separate suits. The first appellate court also observed that in case the two suits are not filed by the plaintiff then the trial court should re-determine the provisional rent specifying the liability of each defendant. The first appellate court, therefore, set aside the judgment and decree of the trial court dated 31.3.1993 and remanded the case to the trial court.

It appears from the facts mentioned above itself that the plaintiff's own case was that there were two separate tenancies, one having consideration of Rs.100/- per month and another having consideration of Rs.300/- per month. The plaintiff's specific allegation in the plaint is that first portion has been sub-let by defendant no.1 to defendant no.2. This Court is not inclined to investigate the merit of the said submission of the plaintiff because in the present appeal, the order of remand alone is under challenge. It appears that the first appellate court committed serious error of law in observing that the plaintiff should have filed two separate suits. Looking to the allegations levelled in the plaint, even if two suits could have been filed, even then because of involvement of common questions of fact and law, one suit could have been filed by the plaintiff and, therefore, the first appellate

court's observation that the plaintiff should have filed two suits, was uncalled for.

So far as striking off the defence of the defendants is concerned, certainly, the trial court has not applied its mind to the facts of the case. The plaintiff's case was for two tenancies and further more, the plaintiff's allegation is with respect to the sub-letting of the premises which, according to the plaintiff, has been let out to defendant no.2, therefore, there is specific allegation of two tenancies and for the liability of the rent of the portion, which has not been taken on rent by defendant no.1, cannot be fastened upon defendant no.1 by determining the rent @ 400/- per month.

In view of the above, except observation of the first appellate court, the order of setting aside of the order of the trial court in respect to the striking off the defence and direction to the trial court to determine the rent separately for separate tenancies, the first appellate court has not committed any error of law. Since the determination of rent itself was wrong, therefore, the striking off defence of the defendants, also falls to the ground.

The defendants were also entitled to cross-examine the witnesses of the plaintiff and were also entitled to produce their own evidence with respect to the other issues, even in case where the defence of the defendants has been struck off. In totality of the facts, re-trial from the

stage of determination of rent is necessary.

In view of the above, the appeal is dismissed. The record be sent forthwith to the trial court. Both the parties are directed to remain present before the trial court on 4.9.2006, as prayed by both the learned counsel for the parties. The trial court shall decide the suit expeditiously.

(PRAKASH TATIA),J.

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